IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

Bail Appl..No. 4219 of 2007()

CC.499/2005 of J.M.F.C.,VARKALA
CRIME NO.306 OF 2004 OF VARKALA POLICE STATION

.....

: PETITIONER/ IST ACCUSED

SALIM,XIX/130,S.S.MANSIL,
POTTIKAZHIKAM MOOLA,
KOLLAM.

BY ADV. SRI.S.M.PREM
SMT.K.P.SANTHI

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4219 of 2007

Dated this the 12th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner faces indictment in a prosecution, inter alia, under Sections 451 & 354 I.P.C. Cognizance has already been taken on the final report submitted by the police after investigation. Consequent to non appearance of the petitioner, the petitioner finds a non bailable warrant issued by the learned Magistrate chasing him.

2. According to the petitioner, he is absolutely innocent. There was no wilful laches on his part. His absence was not deliberate. He is prepared to surrender before the learned Magistrate and co-operate with the court for the expeditious disposal of the case. He apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. The petitioner, in these circumstances, has come before this Court for issue of appropriate directions under Section 438 and/482 Cr.P.C in his favour.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory

reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in these cases.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

5. Hand over a copy of this order to the learned counsel for the petitioners.

(R.BASANT, JUDGE)

rtr/-